

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE AUTOMOTIVE PARTS ANTITRUST
LITIGATION

In Re: INSTRUMENT PANEL CLUSTERS

THIS RELATES TO:
ALL DIRECT PURCHASER ACTIONS

CASE NO. 12-MD-02311
HON. MARIANNE O. BATTANI

2:12-cv-00201-MOB-MKM

**SETTLEMENT CLASS COUNSEL’S REPORT ON DISSEMINATION
OF NOTICE OF PROPOSED PLAN FOR DISTRIBUTION OF NIPPON SEIKI AND
YAZAKI SETTLEMENT FUNDS AND REQUESTS FOR ATTORNEYS’ FEES AND
EXPENSES AND INCENTIVE PAYMENT AND CLASS MEMBERS’ RESPONSE**

Settlement Class Counsel submit the following report concerning the dissemination of notice pursuant to this Court's Order dated July 27, 2018 (2:12-cv-0201, Doc. No. 208) (the “Notice Order”), and Settlement Class members’ response to the notice program. As described more fully below, notice was mailed to 351 potential Settlement Class members and published in accordance with the Notice Order. No objections were filed to the proposed plan for distribution of settlement funds, to Settlement Class Counsel’s request for an award of attorneys’ fees and reimbursement of litigation costs and expenses, or to the request for an incentive payment to the Class Representative.

Settlement Class Counsel respectfully submit that the complete absence of objections militates strongly in favor of the proposed plan for distribution of settlement funds, and the requests for attorneys’ fees and litigation costs and expenses, and an incentive payment.

I. DISSEMINATION OF NOTICE TO THE CLASS

Pursuant to the Court’s Notice Order, on August 16, 2018 Epiq Class Action & Claims Solutions, Inc. (“Epiq”), the Notice and Claims Administrator retained by Direct Purchaser Plaintiff, mailed 351 copies of the Notice of Hearing on Proposed Plan of Distribution of Settlement Fund, and Settlement Class Counsel’s Requests for an Award of Attorneys’ Fees and Expenses and an Incentive Payment to the Class Representative, and Claim Form (the “Notice”), to potential Settlement Class members by first class mail, postage prepaid. Declaration of Ryan Kao, Senior Project Manager for Epiq. Exhibit 1 at ¶ 6. Epiq also re-mailed returned notices for which updated addresses were obtained. *Id.* at ¶ 7. In addition, a copy of the Notice was (and remains) posted online at www.AutoPartsAntitrustLitigation.com/ipc, a website dedicated to this litigation. *Id.* at ¶ 9.

Also in accordance with the Notice Order, the Summary Notice of Hearing on Proposed Plan of Distribution of Settlement Fund, and Settlement Class Counsel’s Requests for an Award of Attorneys’ Fees and Expenses and an Incentive Payment to the Class Representative (the “Summary Notice”) was published in the national edition of *The Wall Street Journal* and in *Automotive News* on August 27, 2018. *Id.* at ¶ 8.

Notice to the Nippon Seiki and Yazaki Settlement Classes under Fed. R. Civ. P. 23 has, therefore, been provided as ordered by the Court.

II. ABSENCE OF OBJECTIONS TO THE PROPOSED DISTRIBUTION PLAN, AND REQUESTS FOR AN AWARD OF ATTORNEYS’ FEES AND EXPENSES AND AN INCENTIVE PAYMENT

The Notice advised that any objection to the proposed plan for distribution, or to Settlement Class Counsel’s requests for an award of attorneys’ fees and litigation costs and expenses, or the

request for an incentive payment had to be filed with the Clerk by October 5, 2018, with copies mailed to Settlement Class Counsel and to counsel for Nippon Seiki and Yazaki.

As of the date of the filing of this Report, no objection to the proposed plan for distribution of the Settlement Fund, the request for an award of attorneys' fees, litigation costs and expenses, or the request for an incentive payment to the Class Representative has been filed with the Court or received by Settlement Class Counsel.

III. THE REACTION OF MEMBERS OF THE SETTLEMENT CLASSES SUPPORTS APPROVAL OF THE PROPOSED PLAN FOR DISTRIBUTION AND THE REQUESTS FOR AN AWARD OF FEES AND EXPENSES AND AN INCENTIVE PAYMENT

The reaction of the class has been recognized repeatedly by courts within this Circuit and elsewhere as a factor in evaluating the fairness, reasonableness, and adequacy of a proposed Settlement, and related matters. *See, e.g., Sheick v. Auto. Component Carrier LLC*, No. 2:09-cv-14429, 2010 WL 4136958, at *22 (E.D. Mich. Oct. 18, 2010) (“scarcity of objections – relative to the number of class members overall – indicates broad support for the settlement among Class Members.”); *In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508, 527 (E.D. Mich. 2003) (“That the overwhelming majority of class members have elected to remain in the Settlement Class, without objection, constitutes the ‘reaction of the class,’ as a whole, and demonstrates that the Settlement is ‘fair, reasonable, and adequate.’”); *In re Delphi Corp. Sec., Deriv. & “ERISA” Litig.*, 248 F.R.D. 483, 499 (E.D. Mich. 2008) (small number of opt-outs or objections is indicative of the adequacy of the settlement).

Individual notice was mailed to 351 potential Settlement Class members identified by Defendants, published in *Automotive News* and in *The Wall Street Journal*, and posted on-line. The

total absence of objections militates strongly in favor of approval of the proposed plan for distribution of settlement funds, the requests for attorneys' fees, litigation costs and expenses, and an incentive payment to the Class Representative.

IV. REQUEST FOR AN AWARD OF ATTORNEYS' FEES

As of July 31, 2018, Plaintiff's Counsel's lodestar, based upon historical rates, was \$9,868,766.32. Direct Purchaser Plaintiffs' Memorandum in Support of Its Motion for an Award of Attorney's Fees, Litigation Costs and Expenses, and Incentive Payment to the Class Representative, at 8 (the "Fee Brief") (2:12-cv-0201, Doc. No. 218). Since that date, Plaintiff's Counsel have continued their efforts on behalf of the Settlement Classes by, among other things, drafting the final settlement fund distribution submission and overseeing the dissemination of notice to members of the Settlement Class in accordance with the Notice Order. As a result of this continued effort, as of September 30, 2018, Plaintiff's Counsel's combined lodestar was \$9,933,255.82. Were the Court to award a fee of 33⅓% of the \$7,750,000 Settlement Amount, after deducting reimbursed costs and expenses in the amount of \$213,264.80, the multiplier on the more current lodestar would be a negative lodestar multiplier of approximately .25.

V. CONCLUSION

Based upon the foregoing, and for the reasons set forth in the Memorandum in Support of Direct Purchaser Plaintiff's Motion for Approval of Proposed Plan for Distribution of the Nippon Seiki and Yazaki Settlement Funds (2:12-cv-0201, Doc. No. 217) and the Fee Brief, it is respectfully requested that the Court grant approval of the proposed plan for distribution of settlement funds, and the requests for attorneys' fees, litigation costs and expenses and an incentive payment to the Class Representative.

DATED: October 29, 2018

Respectfully submitted,

/s/David H. Fink

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CERTIFICATE OF SERVICE

I hereby certify that on October 29, 2018, I electronically filed the foregoing paper with the Clerk of the court using the ECF system which will send notification of such filing to all counsel of record registered for electronic filing.

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